

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DAVID MACK,
Plaintiff,

v.

PROGRESSIVE FINANCIAL
SERVICES, INC.
Defendant.

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CIVIL ACTION NO. 4:13-CV-00544

**DEFENDANT PROGRESSIVE FINANCIAL SERVICES, INC.'S RESPONSE TO
PLAINTIFF'S MOTION TO STRIKE ITS MOTION FOR SECURITY FOR COSTS
UNDER LR CV-65.1(b)**

COMES NOW, Progressive Financial Services, Inc. ("Progressive"), and files its Response to Plaintiff's Motion to Strike its Motion for Security for Costs Under LR CV-65.1(b) and would respectfully show unto the Court as follows:

I.

1. Plaintiff requests Progressive's Motion for Security for Costs Under LR CV-65.1(b) to be stricken for its exhibits filed as one pdf document rather than separate exhibits, no certificate of conference, and failure to send copies of the motion and reply to Plaintiff.
2. Plaintiff's first contention is that Progressive's motion should be stricken because its four exhibits were electronically filed as one document rather than four separate documents. Doc. 22 at 1. This is logically not something for Plaintiff to assert, but rather the Court instead. When the Motion and attachments were filed, the Court accepted the submission and did not request a correction. Furthermore, Plaintiff fails to, and cannot show any unfair surprise or prejudice for the exhibits being submitted as one combined document rather than four. His motion to strike on this ground should be denied.

3. Next, Plaintiff argues Progressive failed to confer before filing its motion and failed to attach a certificate of conference. LR CV-7(i) states “[n]either the ‘meet and confer’ nor the ‘certificate of conference’ requirements are applicable to *pro se* litigants....” Therefore, Progressive was never required to confer nor attach a certificate of conference. And, as apparent in Plaintiff’s Response, he is not surprisingly opposed. Plaintiff’s Motion to Strike on this ground should be denied.

4. Last, Plaintiff argues that Progressive failed to send a copy of its Motion and its Reply in compliance with FRCP 5. Progressive does admit it does not appear it mailed the original Motion to Plaintiff, but contrary to Plaintiff’s assertions regarding its Reply, it was indeed mailed to Plaintiff and also signed for by Plaintiff himself¹. Exhibit A. Also, the issue before the Court on Progressive’s Motion for Security of Costs has already been fully briefed by both sides, therefore Plaintiff cannot show any unfair surprise or prejudice cause by not receiving the Motion via mail. Granting Plaintiff’s Motion to Strike would only serve to defeat any sense of judicial economy. Progressive requests this Court deny Plaintiff’s Motion to Strike in its entirety.

II.

WHEREFORE, PREMISES CONSIDERED, Progressive Financial Services, Inc. respectfully requests this Court to deny Plaintiff’s Motion to Strike Progressive’s Motion for Security of Costs, and award any other relief, whether at law or in equity, justly entitled to Progressive.

¹ Progressive does point out however that Plaintiff signed for receipt of the Reply the day after his Amended Motion was filed.

Respectfully submitted,

ROBBIE MALONE, PLLC

/s/ Xerxes Martin
ROBBIE MALONE
State Bar No. 12876450
Email: rmalone@rmalonelaw.com
XERXES MARTIN
State Bar No. 24078928
Email: xmartin@rmalonelaw.com
DREW JONES
State Bar No. 24083269
Email: djones@rmalonelaw.com
ROBBIE MALONE, P.L.L.C.
Northpark Central, Suite 1850
8750 North Central Expressway
Dallas, Texas 75231
TEL: (214) 346-2630
FAX: (214) 346-2631

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing document has been forwarded to Plaintiff's counsel via ECF and Certified Mail, Return Receipt Requested on this 26th day of February, 2014 to:

David E. Mack
7720 McCallum Blvd. #2099
Dallas, Texas 75252

/s/ Xerxes Martin
XERXES MARTIN